
BEFORE THE TOWN OF APPLE VALLEY
TOWN COUNCIL

IN THE MATTER OF

PETITION TO DISCONNECT FROM
APPLE VALLEY

DECISION ON PETITION

This matter is before the Town Council of the Town of Apple Valley under Title 10, Chapter 2, Part 5 of the Utah Code for a decision on a petition to disconnect certain property from the Town. Having fully considered the petition, for the reasons set forth below, the petition to disconnect is denied.

FACTUAL BACKGROUND

A. The Petition for Disconnection

1. On September 30, 2019, the Town received a petition to disconnect certain property from the Town.
2. The petition included a legal description of the proposed disconnection area along with a map of that area.
3. The proposed disconnect area comprises approximately 3,184 acres, which is about 22% of the total privately owned area within the Town's current boundaries.
4. The proposed disconnect area contains approximately 32 % of the Town's current population.
5. The proposed disconnect area contains land where the much of the Town's future growth is expected to occur.

6. The petition was directed to Washington County and copied to the Town's recorder. The petition designated two people with authority to act on all petitioners' behalf, Joan Dinneen and Autumn McGregor.

7. Upon receipt, the Town reviewed the signatures on the petition. From that review, it appears that some signatures were obtained over a year ago; some signatures were from individuals that have since deceased; and some signatures were duplicates.

8. The Town determined, however, that the petition contained the names, parcel identification numbers, and signatures of owners of more than 50% of the private real property within the proposed disconnection area. The 50% threshold was crossed because landowners owning more than one parcel signed the petition for each separate parcel owned.

9. The express reasons given in the petition for the requested disconnection were stated in two bullet points:

- "The City does not represent that property rights of the undersigned"
- "To return to county government."

10. No other reasons were provided in the petition.

11. Petitioners published notice of the disconnection request once a week for three consecutive weeks in *The Spectrum*, a newspaper of general circulation within the Town.

12. At the conclusion of this publication, the Town timely noticed a public hearing to address the petition as required by Utah Code § 10-2-502.5(1).

13. That public hearing was held before the Town Council on November 4, 2019.

B. The Public Hearing

14. In compliance with Utah Code § 10-2-502.5(3), the Town permitted any person to speak and submit documents regarding the disconnection proposal.

15. Individuals spoke both for and against the proposal.

16. Grounds advanced in favor of the disconnection were general in nature.

17. For example, Ms. Dineeen, the point person designated in the petition, made references to what she called the Town's alleged "disbanding" and "takeover" of the Big Plains Water and Sewer Special Service District as reasons for the proposed disconnect.

18. References to the Special Service District were repeated throughout the hearing by others favoring disconnection.

19. The Chairman of the Board of the Special Service District, Mr. Harold Merritt, similarly discussed issues related to the Special Service District, including an assertion that the disconnection would not affect the Special Service District's operations in the disconnected area.

20. Other than references to the Special Service District, grounds advanced in favor of disconnection were general accusations against the Town and its officials. These included generalized claims about missing funds; allegations of "corruption" and "harassment" related to the Town's enforcement and application of its zoning ordinances; and complaints about the Town's allocation of resources on issues related to flood control.

21. Others at the meeting spoke against the petition. Reasons offered for denying the petition included concerns that allowing the disconnection would divide the Town; result in an increase in taxes for those remaining in Town; and a concern that those spearheading disconnection did not actually reside in the Town but are instead a few developers with interests inconsistent with actual Town residents.

22. Several individuals currently residing in the proposed disconnection area also spoke against the petition.

23. At the conclusion of the public hearing, the Town Council took the matter under advisement.

FINDINGS AND DECISION

I. Petitioners' Failure to Mail Notice to All Residents in the Proposed Disconnection Area.

The applicable statute, Utah Code § 10-2-501(3), imposes various requirements on petitioners in addition to filing the disconnection request with the Town and publishing notice for three weeks. Among other things, they must also mail “notice to each owner of real property located within the area proposed to be disconnected.” Utah Code § 10-2-501(3)(d). The Town could not confirm compliance with this requirement. In fact, two members of the Town Council—Councilmembers Denny Bass and Debbie Kopp—live within the proposed disconnection area and neither received the required mailed notice. The Town Council finds this lack of notice troubling, particularly given that this notice is specific to those whose property would be removed and disconnected from the Town.

Furthermore, although the petition for disconnection contains names, signatures, and parcel identification numbers of individuals purporting to support disconnection, it does not contain “addresses” as required under Utah Code § 10-2-501(2)(b)(i). This is another defect in the petition.

Still, because the statutory triggering event for the Town to take action on the petition is completion of publication, *see* Utah Code § 10-2-502.5(1), the statute appears to require the Town to consider the merits of the petition, independent of any defects and failures by petitioners to comply with their notice obligations in the statute.¹

¹ It is not clear that the same obligation exists for any subsequent proceeding or procedure related to the petition for disconnection. As a result, the Town reserves the right to raise these issues and defects at a later time should it become necessary.

II. Petitioners Have Failed to Demonstrate That Disconnection Is Viable or Otherwise in the Best Interests of the Town.

Petitioners have the burden to prove the viability of their proposed disconnection, including that justice and equity require it and that it would not leave the Town with increased costs and burdens in continuing municipal services to its remaining residents. *See* Utah Code § 10-2-502.7(3). The Town finds and concludes that petitioners have not met this burden.

A. The Special Service District cannot operate independent of the Town.

Based upon the comments at the public hearing from those favoring the petition, the driving force for disconnection is directly related to the Town's governance authority over the Special Service District—as if the Special Service District is seeking to disconnect from the Town. The contention is that the Special Service District can and should operate independent of the Town, and disconnection would somehow advance the best interests of the Special Service District and its ability to service customers in the disconnected area, outside of municipal boundaries, and without Town oversight.

The Special Service District does not and cannot operate independently from the Town. Rather, the Utah Constitution and state statute vest plenary authority in the Town Council to govern the Special Service District. *See* Utah Const. art. XI, § 7(1)(a) (“The Legislature may by statute authorize:(a) a county, city, or town to establish a special service district within all or any part of the county, city, or town, *to be governed by the governing authority of the county, city, or town*, and to provide services as provided by statute;”) (emphasis added); Utah Code § 17D-1-301(1) (“Each special service district *shall be governed by the legislative body of the county or municipality that creates the special service district*, subject to any delegation under this section of a right, power, or authority to an administrative control board.”) (emphasis added).

The Town created the Special Service District in 2011 for the express purpose of providing water and sewerage services to the Town: “within a boundary comprised of the boundaries of the municipality of Apple Valley Town.” Resolution 2011-25. The Resolution creating the Special Service District delegated various rights, powers, and authority in the Special Service District’s administrative control board. *See* Resolution No. 2011-25. More recently, the Town Council modified and limited that authority because of the lack of budgetary and financial discipline the Special Service District had exhibited in its operations. *See* Resolution 2019-01. The administrative control board was allowed to continue in place to advise the Town Council and run the day-to-day operations of the Special Service District. *Id.* §§ 2 & 3.

The claims during the public hearing about a “takeover” and “disbanding” of the Special Service District are no doubt directed at Resolution 2019-01. But it is incorrect to suggest that the Special Service District was “taken over” or “disbanded.” Neither is true. Nor is it correct to suggest that the Special Service District would or could be freed from Town control if the Town granted the disconnection petition. Rather, disconnection would put the Town in the position of running a Special Service District outside of its municipal boundaries—something not contemplated when the Town created the Special Service District to serve only its residents.

In fact, the statute allowing creation of special service districts limits the creation of those districts to the boundaries of the municipality that creates the district. *See* Utah Code § 17D-1-202(1). Not only that, but the Utah Constitution precludes the Town from “directly or indirectly, leas[ing], sell[ing], alien[ating] or dispos[ing] of any waterworks, water rights, or sources of water supply now, or hereafter to be owned or controlled by it.” Utah Const. art. XI, § 6. It obligates to the Town to preserve, maintain, and operate its water resources for the express

purpose of “supplying its inhabitants with water at reasonable charges.” *Id.* The proposed disconnection is directly at odds with these statutory and constitutional mandates.

In sum, concerns about the Special Service District are unwarranted, unjustified, and provide no legitimate basis to disconnect property from the Town.

B. The political process, not disconnection, is the answer to other complaints advanced as a basis for disconnection.

Aside from the Special Service District concerns, the remaining “reasons” given in favor of disconnection are best categorized as unfounded complaints, opinions, and allegations about the Town’s application and enforcement of ordinances, its management of finances in relation to flood control and public services, and other complaints common of any community. These claims are wrapped up in hyperbole: calls of “corruption,” “harassment,” and similar claims for which no evidence was offered. The Town finds and concludes that these assertions do not justify disconnecting 3,184 acres of property from the Town.

The express purpose of the Town’s Land Use Code is to promote “the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the Town of Apple Valley ...” Apple Valley Town Code § 10.02.020. This includes “providing adequate light and air, classification of land uses and distribution of land development and utilization, protection of the tax base, securing economy in governmental expenditures, fostering the town’s commercial and industrial growth, and the protection of both residential and nonresidential development.” *Id.*

The Town is therefore charged with enforcing its ordinances and ensuring compliance with the same. It is not consistent with justice or equity to allow any individual to simply remove their property as well as the property of numerous other residents from the Town’s jurisdiction because of disagreement with the Town’s enforcement and application of the land

use ordinances. Utah law provides remedies for those aggrieved of municipal land use decisions. *See, e.g.*, Utah Code §§ 10-9a-701 to -708, -801. Disconnection is not one of them.

The same is true of the Town's decisions to allocate resources. Such decisions are vested in the Town's elected officials. *See, e.g.*, Utah Code §§ 10-8-1 & -2. As several individuals expressed at the public hearing, for those claiming disagreement with decisions of current government officials, the answer is the political process—to exercise the right to vote; to show up in public hearings and meetings and express that opinion to elected representatives through democratic processes. The answer is not to divide the community through disconnection.

In short, Petitioners have failed to substantiate their burden to justify disconnection.

III. Disconnection Would Adversely Affect the Town and Its Remaining Residents.

The Town Council has considered other factors with respect to the petition as outlined in Utah Code § 10-2-507. Of immediate concern is that the disconnection area contains roughly 32% of the Town's current population. That is 34% of the Town's tax base. Disconnection thus runs directly counter to the Town's charge to protect its tax base. It would likely result in an increase in taxes on the remaining residents to provide the same services with fewer residents and commercial businesses paying their portion.

There is also a future concern. As explained above, the proposed disconnection area comprises approximately 22% of the land within the Town's boundaries much of which is where the Town's future development and growth will occur. This development will bring new residents and businesses to the Town and contribute to its future growth and, importantly, its tax base. Disconnecting that land from the Town will stymie that growth and future tax base, and limit the Town's potential and ability to thrive.

The Town would also lose its ability to regulate and determine what occurs on the disconnected area, particularly the area that borders the Town. This includes the ability to

regulate residential and commercial use, density, traffic, housing types, and so on—all to the detriment of the Town and its residents that border on the disconnected area.

Finally, in addition to the legal issues and impediments that disconnection would have related to the Special Service District, there are practical concerns that the Town would have to unravel. Even if the Special Service District could provide extraterritorial services—which appears statutorily and constitutionally barred—the cost and expense of implementing those services is potentially significant. At minimum, it would include investigating, securing or transferring easements and rights-of-way with Washington County for the location of the waterworks and delivery systems located outside of Town boundaries; revising plat maps; securing approvals from the Lieutenant Governor’s office; and creating and securing user and maintenance agreements with non-residents in the disconnection area as well as Washington County. The cost and expense to the Town in investigating all that would be required to effect this change, including hiring engineers, surveyors, and legal counsel to address these and related issues is significant. Ultimately that cost would be shouldered by all property owners—whether remaining in the Town or in the disconnection area. It is simply not viable or feasible—legally, practically, or financially—to go down this path.

In sum, disconnection is not in the best interests of the Town and its residents. Rather, granting the disconnection would jeopardize the viability of the Town’s existence. A previous attempt to disincorporate the Town was put to vote and defeated in June 2012. The Town Council will not allow an attempted disconnection by a minority of landowners to accomplish something that the Town’s citizens have previously rejected.

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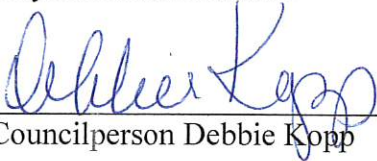
CONCLUSION

The petition is denied.

DATED: December 9, 2019.



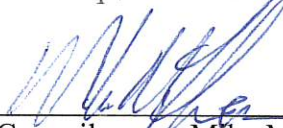
Mayor Martin Lisonbee



Councilperson Debbie Kopp



Councilperson Paul Edwardsen



Councilperson Mike McLaughlin



Councilperson Denny Bass

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2019, I served the foregoing DECISION ON
PETITION as follows:

By email to Petitioners' designated representatives:

Joan Dinneen
Autumn McGregor
Return.to.WashCo@gmail.com

By U.S. mail, postage prepaid to:

Kim M. Hafen
Washington County
197 East Tabernacle Street
St. George, Utah 84770

Ben Bell